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The San José Project:
Mining, Repression and Resistance in Oaxaca

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The San José Project:
Mining, Repression and Resistance in Oaxaca

by

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Report

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Dedication

To all those in Oaxaca whose bravery and hospitality made this report possible.

Abstract

The San José Project:
Mining, Repression and Resistance in Oaxaca

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This report chronicles a conflict over a Canadian-owned silver and gold mine in San José del Progreso, Oaxaca, as told by the author's first-hand experience, eyewitness interviews, and research. Beginning with the Mexican Federal Government's concession of ejidal land for use by the mining company, without the consent or consultation of the surrounding population, elaboration of the Trinidad mine in San José del Progreso has resulted in division in the community and intense activism, sometimes resulting in violent conflict.

Table of Contents

List of Figures

Introduction

The business of mining for precious metals is nothing new to Mexico. Today it raises old troubling questions. In pre-Columbian times, the great empires of Mesoamerica chipped away at the region's vast deposits of gold and silver, mainly for ornamental purposes. But the Spanish Conquest shifted small-scale mining to a much larger effort using forced indigenous labor. The gold and silver produced in Mexican mines exported to the Spanish monarch sustained its empire in the Americas. The colonial legacy of chattel slavery and debt peonage drove the mining industry after Mexico gained its independence in 1810, increasing widespread discontent among the marginalized masses. In 1906 this resentment erupted into a worker rebellion at the U.S.-owned and -operated Cananea copper mine in the northern state of Sonora—an event considered one of the precursors to the Mexican Revolution of 1910.

The triumph of the Revolution brought with it significant social improvements for the country's native population. Under the new Constitution, indigenous Mexicans were granted the right to hold land communally, as they had before the Spanish Conquest. The reinstatement of the *ejido* system—a form of semi-autonomous communal land sharing—recognized the incompatibility of Mexico's indigenous population's concept of land ownership with the European concept of private property and put self-determination of land use in the hands of indigenous communities.

Indigenous citizens were afforded the right to *usos y costumbres*, a traditional system of collective rule in which *ejido* members govern through popular assembly.

In 1991 President Carlos Salinas de Gotari eliminated the constitutional right to *ejidos*. Citing the "low productivity" of communally owned land, De Gotari amended Article 27 of the Constitutional to make it legal to sell *ejido* land and allow peasants to put up their land as collateral for a loan. This paved the way for the introduction of NAFTA in 1994, which, along with the agrarian reforms of 1991, effectively rolled back the agrarian gains made for peasants in the Revolution of 1910. However, in Oaxaca, the state with the highest number of *ejidos*, indigenous citizens can elect their municipal

political leaders through *usos y costumbres*. Oaxaca is the only Mexican state that formally recognizes this system of governance in indigenous communities, though even here it is only a partial recognition.

After NAFTA, Mexico's relatively undeveloped mining industry had to compete directly with the U.S. and Canada. In much the same way that U.S. agri-business supplanted Mexican corn farmers, Canada's mining industry—one of the strongest in the world—easily dominated the mining sector in Mexico. The 2005 figures by Canada's Department of Foreign Affairs and International Trade, , illustrate its advantage: 60 percent of the world's mining and exploration companies are listed in Canada; Worldwide, 85 percent of the world's mining deals are done in Canada; Canadian companies account for more than 40 percent of global exploration budgets; Canada has interests in more than 3,000 mineral properties in more than 100 countries. In Oaxaca, corporations based in Canada run all but three of the 20 current mining operations (two are Mexican and the other is run by a U.S. company).

In a 1993 *Mining Magazine* article, John Chadwick wrote that although in the U.S. and Canada,

> weak markets, rising costs, increased environmental control and other regulatory constraints have all taken their toll, mining, a great tradition in both these countries, is far from dying. Mexican mining, by contrast, is not being talked down, far from it. As a result of liberalisation and privatisation, Mexico's mining industry is being seen to boom with rapidly rising efficiencies, inflowing foreign investment and increasing exploration.

Chadwick wasn't exaggerating. Without trade barriers in place, U.S. and Canadian companies could not only take advantage of Mexico's weak labor and wage laws, but they could also breeze through the permit process with the help of local governments that most often accept these projects eagerly, with or without the consent of the population—a much harder sell at home. What's more, these companies could accomplish this while sidestepping the headaches of the more scrutinizing environmental regulatory agencies in their countries. For example, if an exploration company wants to apply for a permit to mine in Quebec, that company must first submit a plan for the

mine's closure in the future, along with a deposit equal to 70 percent of the estimated environmental clean-up costs, should an accident happen. When environmental destruction does occur, it brings a media firestorm with it.

But when Canadian firms operate in Mexico, bad publicity at home is not a particular concern. A LexisNexis search of Canadian press coverage of mining in Mexico turns up such laudatory headlines as "Foreign miners flocking to Mexico" and "Mexico lays out the mining welcome mat." Coverage of the frequent devastation of communities and the environment wrought by foreign mining companies is scant, at best.

Engineers from Vancouver-based Fortuna Silver arrived at *La Trinidad* —a previously abandoned subterranean silver and gold mine—in 2006, while a massive revolt raged in Oaxaca de Juarez, the capitol city, just 30 miles away. The 2006 uprising, one of the most significant social movements of the last two decades, began when Governor Ulises Ruíz sent armed police to forcefully dislodge a peaceful protest by the Section XXII Teachers Union. Police fell on the teachers with tear gas and batons, driving them from the zócalo. Taking refuge in a radio studio at the Autonomous University of Benito Juárez, with the help of students, the teachers broadcast what had happened over the airwaves, prompting a surge of popular outrage from the city and surrounding municipalities. By the thousands , people poured in to confront the police. They pushed the police out of the city. The protesters set up barricades throughout the city, fighting back the police for six months. During this time protesters created the People's Popular Assembly of Oaxaca (APPO in its Spanish acronym), which, along with the Section XXII, continued to fight against social injustices after an intervention from the army ended the uprising in 2007. But stability was soon threatened by problems in La Trinidad, the nearby mine which was undergoing expansion under Canadian direction.

Cracked Foundations and Dry Wells

"We felt a '*boom!*' come from the ground, and then there was this crack in the wall," said Bernardo Vásquez. The cracks would appear sometimes suddenly, sometimes over time as the ground underneath the house shifted.

The Vásquez family (one of many here with this common last name, but unrelated) built their mud brick home two decades ago on the slope of the mountain above La Trinidad. It's a modest one-room dwelling, with a dirt road in front and a *milpa*, or small cornfield, in back. On one end of the interior are an old T.V. and a few beds; on the other is a shrine to the Virgin of Guadalupe. A menacing, jagged crack splits the wall next to a makeshift clothes rack. Above, the trunk of a pine tree serving as a roof beam is buckling in the middle, splinters protruding.

Vásquez points to a discolored spot in the corner of the room, where water seeps from another crack when it rains.

"We built this house 25 years ago," he said. "I hope my house doesn't fall down, but the cracks keep getting bigger. If the walls give way, where will we go? We live in extreme poverty. There's no future for us."

The Vásquez house in one of more than 60 properties in the village of San José del Progreso, Oaxaca, that residents say have been damaged by the San José Project, the name given to the expansion and elaboration of La Trinidad. Villagers say that Fortuna is using dynamite to clear tunnels underneath the town—often late at night, in violation of the law—and the tremors from the explosions cause structural damage to the buildings above. Fortuna denies that there are any tunnels running anywhere near San José, and the company maintains that no activity in La Trinidad can be responsible for whatever damage the villagers claim is taking place.

The entrance to La Trinidad lies less than 3/4 mile from town. Surrounded by barbed wire, earth-moving machinery, and stories-high piles of rubble, it is a stark interruption of the endless squares of cornfields, brushy trees and jutting cacti that stretch across the Ocotlán Valley.

Figure 1: Photo of the entrance to La Trinidad, taken in June 2010. As of December 2010, a power plant lies to the entrance's immediate left, a pipeline is being installed parallel to the road, and construction of a tailings dam, to the left of where the photo was taken, is near completion. An oversized Mexican flag flies behind the barbed wire fence. "We're going to take down that flag and replace it with a Canadian one," said one woman whose home has been damaged by the explosions.

When Fortuna began preparing La Trinidad for production in 2006, the people of San José had no idea that the municipal, state and federal governments had negotiated a 50-year lease of more than 140,000 acres in and around San Jose del Progreso for the Canadian company to mine as it saw fit. Despite repeated demands from residents, the terms of these negotiations have never been released, and as a result, accusations of payoffs and shady deal-making have become part of the ongoing narrative for the mine's opponents. Further, opponents vehemently point out that the concession is illegal because, located on an *ejido*, any land privatization would require either prior approval of

the *ejidal* assembly or a federal decree in the Agrarian Tribunal—neither of which took place, as reported by *La Jornada* and other media.

Once up and running in 2011, the San José Project will process up to 15,000 tons of raw material per day, according to company projections, which engineers will refine on-site through a process called froth flotation, in which air is passed through a mixture of water and finely ground silver-bearing rock material to separate the silver from the waste rock. The leftover slurry of water and waste material will be stored in a lined reservoir called a tailings dam some 500 yards from the San José Reservoir, which provides the village with water for irrigation. Fortuna estimates in company news releases that the San José project will yield 5 million silver equivalent ounces annually, at a cash cost of U.S.$ 6.20 per ounce.

Like other foreign mining companies working in Mexico, Fortuna runs all of its on-the-ground operations through its 100 percent-owned Mexican subsidiary, Minera Cuzcatlán.

"Cuzcatlán says we are making this up, but just look! This building is brand new," said Chico Vásquez, pointing at two parallel cracks running across the wall of the Sunday School classroom. The interior smells like fresh concrete, and the wall sockets are still uncovered. Still, cracks run along the walls in each room, as if this were an old building giving way to the weather.

"Just last night there was an explosion," he said. "You should have seen the dust fly! It practically covered the sun."

Figure 2: Bernardo Vásquez points to water damage

Figure 3: One of the cracks in the Vásquez house

Figure 4: Chico Vásques points to cracks in the new Sunday school classroom, as community radio reporters take notes

Figure 5: This small store suffered extensive structural damage

Figures 6 and 7: In some cases, the very foundations of the homes are fractured

All improvements in this community are hard come by. San José del Progreso remains the archetype of the poor Mexican Indian village. About an hour's drive south of the pristine tourist hub of Oaxaca City in the state's Zapotec region, it is one of Oaxaca's hundreds of *ejidos*.

According to the federal government, fewer than 40 percent of homes in Oaxaca have running water, drainage and electricity. Forty percent of houses have dirt floors. Figures on social equality are no more enviable: one in five Oaxacans can't read or write (illiteracy is even higher among women), and one in three children don't attend school. One out of every four people in the state have no daily income whatsoever, and those who do have jobs make between three and seven U.S. dollars a day.

Malnutrition is rampant. Three hundred thirty-seven of Oaxaca's 570 municipalities are classified as severely malnourished; of the 100 Mexican municipalities with the highest levels of malnutrition, 45—most of which are indigenous communities—are in Oaxaca. Statewide, only 10 percent of the population escapes some form of malnutrition.

But in villages like San José, even those figures seem generous.

Ironically, many of these impoverished communities sit atop large deposits of gold and silver. To date, the Mexican government has granted 30 exploration permits to mining companies. Taken together, those concessions cover nearly 2.5 million acres, or 12.5 percent of the state's territory—much of which lies on indigenous land, as is the case with San José del Progreso.

Like 90 percent of Oaxaca's indigenous villages, San José depends on subsistence agriculture as its principal source of food. Water scarcity in the Oaxaca Valley puts the fields and animals in an already vulnerable position. Operating a mine requires an immense volume of water, and it's not hard for a modern mine to use more water in one day than the surrounding population uses in one year.

Figure 8: A family from Calpulalpan de Méndez begs for change. Poverty, malnutrition, and high infant mortality rates are rampant among indigenous citizens. Often families move from *ejidos* to urban slums, where they scrape by on handouts in Oaxaca's colonial center.

Fears that the San José Project will impact natural water sources grow throughout nearby villages. Across the highway, in the village of Magdalena, residents say things have already taken a turn for the worse.

"Just look around. See how the homes and the roads have been damaged from the explosions. And even worse, the wells have lost water," said Cándido Sánchez, the mayor of Magdalena.

"The people here are enraged. Ninety-five percent of the people here live in the *campo*, they depend on the water that falls from the sky and comes from the ground. That's why people are angry about the mine," he said.

There is no current documentation that water levels have decreased, or that the San José Project would cause such a drop in the well levels. A recent report from the National Water Commission, or CONAGUA, however, shows that such things have happened before in Oaxaca.

According to the report, gold and silver mining by another Canadian company, Continuum Resources (which was a co-owner of the San José Project before its takeover

by Fortuna Silver), dried up 13 of the 20 groundwater sources in the indigenous village of Calpulalpan de Méndez, some 60 miles south of San José. There, subterranean mining activities interfered with the natural circulation of groundwater, leaving residents with a devastating shortage of water for drinking and irrigation.

And then there's the question of contamination.

Testing the Sacred Cow

"How do we know if we're contaminated? We could all be contaminated and we wouldn't even know it!" bellowed José David Hernández, a veterinarian in the nearby urban center of Ocotlán del Valle.

In 2007, he received a surprise visit from a frantic subsistence farmer whose cow had fallen mysteriously ill. The farmer had walked 10 miles from his home in San Jerónimo Taviche to plead with Hernandez to come take a look. The municipality of Taviche is part of Fortuna's concession, and the place where raw materials from La Trinidad were taken for grinding and processing in 2006. It's also home to numerous abandoned mines, which have little to no monitoring by environmental agencies.

"When we arrived at his field, the cow was already dead," said José David. "So I cut samples from the kidneys, lungs and liver, which I froze and sent to the toxicology center in Morelos.

"The results showed that the animal was full of arsenic, mercury, cadmium, the works," he said, his eyebrows angling down and his voice rising. "It died from exposure to the toxic products the Canadian companies come to put in the Ocotlán Valley."

José David's toxicology results jolted the communities of the valley. Nervous and suspicious about the source of the contamination, they pressed Fortuna and the municipal government of San José del Progreso to release the environmental impact study, along with details on the negotiations for the mining permit, but got no response.

In 2009 José David and others living in the area took water samples from area wells and sent them to the University in Baja California for analysis. The results showed excess levels of lead measuring 15 parts per million—5 ppm in excess of the legal limit

in Mexico.

DIRECCIÓN GENERAL DE SALUD ANIMAL
CENTRO NACIONAL DE SERVICIOS DE CONSTATACIÓN EN SALUD ANIMAL

SENASICA

DEPARTAMENTO DE RESIDUOS TÓXICOS Y CONTAMINANTES
INFORME DE RESULTADOS

DATOS DE LA MUESTRA:

NOMBRE:	JOSE DAVID HERNANDEZ	ESTABLECIMIENTO TIF No.:	----
DIRECCIÓN:	16 DE SEPTIEMBRE # 205 A. COL. CENTRO. OCOTLAN DE MORELOS, OAXACA.		
FECHA DE OBTENCION DE LA MUESTRA:		FECHA DE ENVIO:	
FECHA DE RECEPCIÓN :	01 DE FEBRERO DE 2007	FECHA DE EJECUCION:	12 DE FEBRERO DE 2007
No. DE LOTE:	---	No. DE CASO:	---
CLAVE INTERNA:	07-01159	ESPECIE:	----

FAMILIA	METODO	COMPUESTO	RESULTADO mg/kg o ppm			OBSERVACIONES
			HIGADO	RIÑON	PULMÓN	
METALES PESADOS	VTL-FSS-01	CADMIO	0.35	0.45	0.07	
	NOM-016-ZOO-1995	PLOMO	0.07	0.07	0.04	
CLAVE: 219		cobre	73	4.39	2.93	
	ABV-FSS-01 NOM-015-ZOO-1994	ARSENICO	0.13	2.00	2.10	
	MER-FSS-01 NOM-046-ZOO-1994	MERCURIO	0.02	0.01	ND	

OBSERVACIONES:	EL REMITENTE NO MENCIONA ESPECIE DE LA MUESTRA.

ATENTAMENTE

QFB MA. ELENA GONZÁLEZ RUIZ
JEFA DEL DEPTO. DE RESIDUOS TOXICOS

Vo. Bo.

MVZ. DRA. FLORES HERNÁNDEZ
SUBDIRECTORA DE CONSTATACION

Figure 9: Toxicology results from cow in San Jerónimo Taviche.

--- El **mar 27-oct-09, Jaime Reyes <jaime@iing.mxl.uabc.mx>** escribió:

De: Jaime Reyes <jaime@iing.mxl.uabc.mx>
Asunto: Analisis de Plomo
A: josedavidmvz@yahoo.com.mx
Cc: veteriny@live.com.mx
Fecha: martes, 27 de octubre de 2009, 20:52

Estimado David Hernandez,

Ya realizamos el analisis de plomo de las 2 muestras que nos proporcionaron una de las muestras tenia 0.015 mg/lt de Pb y la otra no se detecto. La norma mexicana de calidad de agua potable (NOM-127-1994) marca como limite maximo permisible para consumo humano 0.010mg/lt. Asi que en base a esto la muestra esta por encima de la norma y puede ser nociva para consumo humano y bueno supongo que para consumo de los animales (necesito checarlo). La muestra que salio con este valor fue una que estaba mas clara (menos turbia) que bueno no se de que sitio sea y/o para que se use, tambien cabe resaltar que el muestreo no fue el adecuado asi que se tendria que realizarse el muestreo nuevamente de manera correcta....en fin ya nos veremos por alla el 6 de noviembre para hablar al respecto. Tambien quisiera pedirles si nos pueden proporcionar copia del documento de evaluacion de las obras de retencion y/o de recarga, esto para poder considerarlo para la reunion del 6 de noviembre.

He intentado comunicarme con usted por telefono pero no contestan, quizas lo tengo mal anotado el numero que tengo es: 951-5710555, ya me dira si esta bien....

bueno espero su confirmacion de recibido y seguiremos en comunicacion

reciba un cordial saludo y saludos a Don Reynaldo y a Don Javier...bueno creo que por aqui tengo correo de Reynaldo le enviare copia del correo tambien a el.

Dr. Jaime Alonso Reyes López
Instituto de Ingeniería
Universidad Autónoma de Baja California

Figure 10: Email from the University of Baja California to José David Hernández, confirming excessive lead levels in water samples taken in the Ocotlán Valley.

Suspicions, fears, and uncertainty about the effects and impacts of mining are widespread in the Ocotlán Valley. Sometimes these fears are unsubstantiated—the belief that the San José Project is using cyanide to process the ores at La Trinidad is one example—but more often than not they come from the past experiences of other communities. The Ocotlán Valley is pockmarked with abandoned mines. The tendency is for mining companies to come promising the world; but they leave only an abandoned mine for the communities, still impoverished, to deal with. And abandoned mines are of much more concern than working ones. When the companies leave, the contaminants stay. Without oversight or maintenance, abandoned mines can be disasters waiting to happen.

Fortuna says the San José Project is different. “We engineered our operations using the worst case scenario of rainfall and groundwater, and we are taking every precaution to make sure contamination is not a possibility,” said Carlos Baca, Investor Relations Manager for Fortuna. “Everything is totally contained.”

Baca says that the opposition's arguments are based on misconceptions that come from horror stories from the north, where large-scale mining has a bigger presence.

"People accuse us of killing cows and putting lead in the water, and we haven't even started operating," Baca said.

But Hilario Vásquez Gómez, a resident of San José and a leader of the opposition to the mine, countered, "They explain very beautifully how this is going to be an ecological mine. When have we seen an ecological mine? Never. There's no such thing."

Vásquez Gómez rejects the idea that opponents' concerns are misinformed, and says that people in the Ocotlán Valley don't need to look at what has happened in the north to understand the risks. "Look at Taviche! The people don't have water, their corn is contaminated, their roads are in shambles, and they haven't gotten any help from the mine or from the state. "And," he added, "animals there were born with deformities."

Mine opponents say that Fortuna will not respond to their demands to release the environmental impact study. However, Carlos Baca and Javier Castañeda, an engineer with Cuzcatlán, did offer to share the study for review for this report, though they warned it was a monstrous 800-page document of scientific jargon written in Spanish.

"That would worry me, especially if there are any bodies of water nearby," said Daene McKinney, professor of environmental engineering at the University of Texas at Austin, referring to a photo of stories-high piles of waste rock near La Trinidad's entrance shaft. McKinney said that the mine's proximity to residential areas could also be of concern, though the real level of risk is impossible to deduce without detailed information on the project and surrounding ecology.

Similarly, any number of factors could cause fluctuations in the Ocotlán Valley's water tables. Wells losing water because of exploration in La Trinidad is only one of many possible scenarios. But until an impartial environmental impact study is carried out and made public, the uncertainty of the communities on the ground will continue to be a source of tension.

Carlos Baca said that Fortuna is making efforts at addressing those uncertainties. "Our community relations department has a whole communication program to educate

people about our business. So we conduct project visits and invite people into our facilities so that they can see what we are doing.

"For example, there were arguments used that we were driving tunnels all the way down to San José, which is totally false. But as they started coming and looking at the work we were doing, they realized that those arguments are false.

> Everything is a matter of communication. People always create interests around politics, and they use whatever argument they can in order to obtain their purpose. So the only thing left for the company to do is to keep working with t he community and to show them that we're there to bring economic wellbeing to everybody.

Residents who oppose the mine say they have never been invited into the mine. To the contrary, they say that their demands for information persistently meet silence or obfuscation.

Baca explains that Fortuna sees the San José Project as a win-win for investors and the community in San José del Progreso alike. For investors, it's a high financial return; for the community, it's a pathway to economic improvement.

"There's a lot of marginalization in San José," he said. "So everything we do is geared towards improving the quality of life and ameliorating the living conditions in the community," he says.

Mining does have the potential to generate employment in an otherwise stagnant economy (though those employment opportunities end when the mine closes). Some in the Ocotlán Valley agree that the San José Project will bring economic benefits, and welcome the project as a way out of poverty.

"Our approach towards the community is to teach them to fish, not to give them the fish. By that I mean we create sustainable economic activity," Baca said. "Remember that we employ 60 percent of our workforce locally, and we also create indirect employment by buying food and other products for our workers from the village."

"What a joke!" countered Bernardo Vásquez. "There are maybe 50 people from San José who work for the mine, and this is a village of thousands. We are *campesinos*, we are not miners. Go ask Juana Vásquez how the mine has improved her life," he said,

referring to a woman who worked as a cook for the miners before becoming an outspoken member of the opposition.

Adding to doubts over the mine's potential benefits was the recent announcement by the Secretary of Work and Social Provision that seven mining companies working in Oaxaca—Fortuna's Minera Cuzcatlán among them—were being sanctioned for violating federal labor and safety laws. Guadalupe González Ruiz, the functionary who made the announcement, cited hygiene, handling and transport of dangerous materials, mechanical equipment and fire safety as among the areas where the companies fell short of the law and violated the safety and health of their employees. González Ruiz did not give specifics on individual companies.

Fortuna points to local development projects it has undertaken in the community, such as building clean burning stoves, clean water storage tanks, and new bathrooms, as well as offering scholarships to the families who participate in the mine's programs. Fortuna also plans to build a new hospital and a drinking water pipeline.

"It is a vile lie that they will improve our conditions," Vásquez said.

> This project was forced on us because it's the government's policy to impose this business of free trade. Developed countries come here, take all we have, and leave us with contaminated land. They come here and leave us poor and sick, and then they go home to enjoy the wealth they took from us. And they say it's for our own good!

Vásquez Gómez insists, as do other members of the opposition, that those who support the mine are few. Asked if the freshwater pipeline and new hospital Fortuna proposed to build would help the community, Vásquez Gómez said,

> What are these promises good for? God gives us fresh water from the ground. Now we should be grateful that the state will control our water? And what good are ten new hospitals if we're swimming in toxins? It's a childish argument. We won't accept any such handouts.

But Fortuna maintains that these positions are marginal, and that the San José Project has been well received.

"We have won the goodwill of the community and of the local government," Baca said.

Peso Politics

The Institutional Revolutionary Party, or PRI, has been in power in Oaxaca for 80 years. In San José del Progeso, the PRI has maintained power in the municipal power for just as long. During that time abuse of public funds, political corruption, and intimidation of dissidents became staple features of the state government, and mistrust of the government grew steadily. Former governor Ulises Ruiz brought this to a high during the 2010 election season, while things were heating up in San José del Progreso. As José Gil Olmos wrote in the national magazine *Progreso*,

> The PRI applies all its tricks in Oaxaca: from the use of social programs for electoral ends to plain and simple violence. What Governor Ulises Ruiz wants is for his protégé, Eviel Pérez Magaña, to succeed him after the July 4 elections. To achieve that, its necessary to abuse the treasury, muddy the campaigns, and resort to violence…and that is what he is doing.

Soon after residents of San José del Progreso learned of Fortuna's operation, rumors and accusations of payoffs began circulating throughout the community. Principle among the rumors was that the PRI mayor, Venancio Oscar Martínez Rivera, received 8,000 pesos—about U.S.$ 640,000—from Fortuna, and that Fortuna was giving handouts to the town in order to buy support. Residents also claim that Fortuna interfered with elections by financing the PRI and the opposition.

"The *priístas* stand outside the polls with ballots already made out for their candidate," says Pedro Díaz, a community radio journalist and officer of the Section XXII who has been following the San José Project. "They say to the *campesinos*, 'put this ballot in the box and bring me the blank one, and I'll give you money.' It's one of the ways they maintain power, using dirty money to get elected and to create division in the community."

Díaz shares the conviction that Fortuna, or its PRI supporters, is trying to buy support from the poor villagers either by direct handouts or by paying people top dollar to do bogus jobs, like organizing the rocks on the side of the road. Opponents cite poor pro-mining members of the community suddenly driving flashy cars or building new modern houses as evidence of this.

"We don't have any documents to prove it," says Hilario Gómez. "But this is a small town where there are no secrets. We've seen it happen, and even if we hadn't, where else would the people here be getting money?"

"Mexican politicians are the biggest and baddest *mafiosos* around," Díaz added.

"Absolutely not," said Carlos Baca when asked about those accusations. "Our business is to mine. It is not our business to get involved with politics."

Interestingly, the PRI was able to maintain power for so long in San José because of a low participation in *usos y costumbres*. But since Fortuna started its project without the approval of the *ejidal* assembly, participation and enthusiasm in *usos y costumbres* has surged to a level not seen before. For the first time, villagers there are using the popular assembly as a tool to challenge entrenched power and interests. In the upcoming December municipal elections, the *Coordinadora* is running against the PRI for the municipal seat, with Vásquez Sánchez the likely candidate for mayor. If elected, the *Coordinadora* will be able to pass a legally binding resolution to shut down the mine. What the reaction from Fortuna and the PRI would be if that happened is a matter of concern.

Consolidating the Resistance

In 2007, the Archbishop of Antequera-Oaxaca installed Father Martín Octavio García Ortiz as the parish priest for the diocese of San Pedro Apóstol. Father Octavio—known locally as Padre Martín—was responsible for Catholic Church activities in the towns surrounding La Trinidad.

Padre Martín's approach to his community was one of environmental education and activism. His religious teachings and activities were inflected with the doctrines of liberation theology and environmentalism—an approach tailor-made for the poor residents of his diocese who depend so crucially on nature for their subsistence. His outreach made Father Martín immensely popular with the population at the same time he became Enemy Number One for supporters of the mine.

Like so many others in the Ocotlán Valley, Padre Martín was alarmed by the results of José David's toxicology report and the subsequent lead-water analysis. He made protecting the ecological and social integrity of the Ocotlán Valley a central subject of his sermons. Because he was the religious leader for numerous towns in the Valley, the priest became the connection among and between residents of the diocese, who had previously been unconnected.

As the opposition became more coordinated, they began planning a strategy for how to deal with the lack of information about the potential impact of the mine. With the help of Padre Martín, the opposition solicited the help of outside specialists to answer the questions to which they say Fortuna and the local government would not respond. In October 2007, those in opposition convened the first of several forums on mining, its impact, and how to deal with the problems mining caused. In the forums—held in Padre Martín's town of San Pedro Apóstol, and attended by environmental and legal specialists from Mexico City's Autonomous University of Mexico (UNAM) and elsewhere, as well as by people from communities where large-scale mining had already taken place—mining opponents shared experiences, expertise, and advice about mining's effects on the environment and community.

Following the forums, mining supporters denounced Padre Martín for instigating unrest around the San José Project. But Padre Martín maintained the support of his congregation and of the state's religious community. In a published reply to denunciations of Padre Martín, the Diocese Commission for Justice and Peace said that the priest does not direct any group, organization or people. Rather, the reply said, his work is spiritual and religious, and his only involvement in social issues has been to offer education and information.

Several things emerged from these forums. First, legal experts confirmed the *ejido* residents accusation of the legal ambiguity of Fortuna's concession because it was not approved by the *ejidal* assembly; further, they claimed, this violated Convention 169 of the International Labor Organization, a legally binding treaty to which Mexico is a signatory that mandates the consultation and approval of indigenous communities in decisions affecting the use of their land.

Fortuna says it has met all of Mexico's legal requirements—a claim that may well be true, though the question falls in a legal grey area. Unlike the ILO Convention 169 and national indigenous land laws, Mexico's Mineral Law does not mention the necessity of consulting of indigenous communities. Others argue that although in terms of legal code Mineral Law occupies a higher place than do the *ejido* laws relative to constitutional hierarchy but international treaties take priority over the Mineral Law.

Secondly, forum participants from mining conflicts outside Oaxaca advised the opposition to take direct action rather than wait for an unlikely intervention on their behalf by the Mexican legal system. Among these participants was Juan Carlos Ruiz, a representative of a San Luis Potosí anti-mining group called the Broad Opposition Front. Ruiz told the forum of his village's struggle against another Canadian mine in Cerro San Pedro, in which residents voted 97-99 percent against the mining project in a statewide public referendum. Ruiz said the mining project moved ahead anyway, and by the time the village won an appeal in court, their land and water had been poisoned beyond remediation.

Whether anything of this sort could happen in San José is a matter of speculation. But a population in which the failure of a harvest or the loss of groundwater is a matter of life and death is not likely to tolerate uncertainty when it comes to contamination. Whether fear of a repeat of Cerro San Pedro was realistic, neither the terms of negotiation over the concession nor the environmental impact report for the San José Project had been made public. This alone heightened anxiety.

The San José *ejido*'s next order of business was to close La Trinidad, which they did through popular assembly under *usos y costumbres*, making the action legally binding. The local authorities and Fortuna ignored the action and continued work as scheduled.

"These people have rebellion in their blood," said Donaldo Esperanza, a former soldier in the Army's Rural Guard who lives in San José del Progreso. "With everything they've seen…the government should be careful with these people."

Esperanza's reservations would prove prescient.

"La Tierra No Se Vende"

"We believe that native villages have the right to be consulted when it comes to this kind of project—they are projects that affect our social lives, the ecology of our land, and the relationship between the villages." Bernardo Vásquez Sánchez Vázquez Sánchez said that when the people are not consulted and their *ejidal* customs not respected, they have no choice but to act by whatever means possible. On March 16, 2009, hundreds of people from San José del Progreso, Magdalena, Ocotlán, and other municipalities did just that. Covering the roads leading to San José with stones to hold back police caravans, they marched to *La Trinidad* and told the workers there that the mine had been declared closed by *usos y costumbres*, and that they had come to enforce the closure. Protesters covered their faces with bandanas and wielded sticks and machetes, yet managed to take over the mine and the city hall peacefully. As they occupied the city for nearly two months, a yellow banner with the words "*La Tierra NO se Vende,*" or "The Land is NOT for Sale," hung at the entrance of the city hall. Another banner at the mine's entrance read "*Cerrado*"—closed.

A news release from Fortuna issued to investors on April 16, 2009, dramatically underreports the numbers of protesters—which range from 150-600, according to eyewitness, photographs and news reports—and mischaracterizes the nature of the protest. It reads as follows:

> Fortuna Silver Mines Inc. (TSX.V: FVI / Lima Exchange: FVI) reports that a group of demonstrators, ranging from 10 to 50 persons, have illegally blocked the main access road to the San Jose del Progreso town and the Company's project. The majority of the people involved are from outside the immediate area of the project, and the demonstrators include only a small fringe group from the San Jose del Progreso community itself.
>
> Along with local authorities, the Company is engaged in discussions with state and federal authorities to assist in bringing about a peaceful and long term resolution to the road blockade.

In the bowels of La Trinidad, protesters found 30 tons of explosives—five times the legal limit. The magazine *Proceso* reports the explosives were later confiscated by the federal government. Protesters descended into the depths of the mine, at 960 feet their passage was blocked by a rising floor of groundwater. Residents of San José del Progreso say they measured the tunnels running in the direction of the village, which they say continued under the areas where buildings were being damaged by explosions.

Reflecting Fortuna's news release to investors, Carlos Baca maintains that those opposed to the mine are a small group of fringe radicals, who decided to takeover of the mine as part of a strategy to bring down the pro-mining PRI mayor of San José del Progreso. "Our operations were used as a political *piñata*," Baca said. "The purpose of the protest had nothing to do with Fortuna; it was to use the mine and the mayor's support of it to turn his people against him so that the PRI doesn't win the election."

"They always accuse us of seeking political interests from the beginning," said Hilario Gómez Sánchez. "What interests are they talking about? We are peasants, not politicians. All we want is for the mine to go away. That, and nothing more."

The opposition occupied the mine for over two months, during which time residents of San José and neighboring communities demanded that the state, municipal and federal governments open a dialogue. They received no response.

"On May 6, at seven in the morning, they surprised us with a police raid, with more than 1,800 police agents, helicopters, dogs, every police delegation—federals, judicials, state—every kind of police," Vásquez Sánchez said. "They detained 23 of our *compañeros* and took them to jail."

In a May 25 news release, Fortuna reported:

> The road blockade reported in a Company news release dated April 16th was brought to an end on May 6th by Federal and State police, as a result of a call to action by local Municipal and Ejido authorities. The Company and local authorities are engaged in dialogue with the fringe group of demonstrators in order to ensure an equitable long term solution to their concerns.

> A police detachment remains on-site to assure there are no further disruptions on the access road to the town and Project. The Company is in the process of gradually reinstating its ground activities.
>
> Fortuna has been carrying out exploration and engineering work at San Jose since 2006. This work has been fully permitted by the Mexican authorities, and the local communities have been kept fully informed about the Project through regular community meetings and briefings. There has been significant community support for the Project.

Among the jailed were Hilario Vásquez Gómez and Ignacio Vásquez Sánchez, brother of Bernardo Vásquez Sánchez. After the police raid, opponents of the mine in San José del Progreso, along with those in the neighboring communities of Magdalena, Maguey Largo, and El Cuajilote, among others, formed the *Coordinadora en Defensa de los Recursos Naturales y Nuestra Madre Tierra del Valle de Ocotlán—Coordinadora* for short—a coordinated front to facilitate the opposition's ability to operate and strategize as a single unit. Vázquez Sánchez was chosen to lead the group.

The *Coordinadora* continued demanding, now as a coordinated unit, that the government open a dialogue with residents to discuss the terms of the mining company. With the help of the Section XXII, the *Coordinadora* was able to negotiate the release of its prisoners, and was able to make progress litigating their demands.

"It has been a strong and bitter political fight. Because of the *priísmo* in this state, the government does everything to avoid addressing the problems surrounding the mine. The situation keeps getting tenser," Vásquez Sánchez said.

Anyone walking the streets could see evidence of this growing tension, amplified by the ratcheting-up of intimidation targeting political "enemies" that is part and parcel of election seasons in Oaxaca. The mine's supporters, now organized in a group called *San José Defendiendo Nuestros Derechos* (composed, in large part, of people from other communities; mining opponents accuse Fortuna of creating and financing the group) carried weapons to intimidate opponents. Notably, so did members of the municipal government.

"The *priístas* carried weapons and made sure everyone saw them. Even the mayor walked around with a sawed-off shotgun, as if it was a town without law," said Donaldo Esperanza.

The unanimous decision through *usos y costumbres* to close the mine, the decision of opponents to take over the mine after the government to failed to respond to that decision, and the subsequent police raid on the opponents became a statewide political issue for leftist candidates in the lead-up to the July 4, 2010, state elections. Flavio Sosa, who was the leader of the APPO (where is this first mentioned and defined? during the 2006 uprising and a candidate for the Workers Party (PT) in the state congressional elections, was one of those who supported the opposition in the Ocotlán Valley. He said in an interview:

> We are faced with a criminal regimen that uses state terrorism as a tool to threaten and control the population, and that uses public resources to enrich themselves personally and to entrench themselves in power. What's happening in San José is a clear example of this and of how business is done in Oaxaca.
>
> We have a corrupt government who is eager for money and who supports these investors without consulting with the population. The municipal authorities are complicit with the state authorities in backing the investors, while the majority of the population rejects this project because they weren't consulted, because they feel it will affect their natural resources and bring contamination, and because they feel it will bring even more poverty and suffering.
>
> But power is a vertical structure here, where decisions that affect communities come from above without consideration of the wellbeing of the citizens.

On June 19, 2010, tensions erupted in a village near San José del Progreso. Bernardo Vásquez Sánchez recounts what eyewitnesses told him:

> As is the custom for the PRI in election season, the municipal authorities arrived at the village of El Cuajilote to intimidate the citizens there. The citizens, in a subtle manner, asked the authorities to withdraw. The authorities then shot at the people of the village, who ran in every direction to try to save themselves. In the confusion, five of our *compañeros* were wounded and the mayor and health minister of San José were killed by their own fire.

Nine of the mine opponents were jailed following the clash, which according to the official story was an unprovoked attack on the municipal authorities by a belligerent group of anti-mining radicals. There is no video or audio recording of the incident to confirm either side of the story. However, the fact that the authorities and their supporters carried firearms and engaged in intimidation is well documented; no such documentation exists corroborating the government's assertion that the mine's opponents possessed firearms.

Sins of the Father

A hand-written sign on the Church of San Pedro Apóstol reads "No Service." Standing outside the empty rectory, Sergio Perez Lopez, the priest's personal assistant and choir director, read slowly and deliberately from an official statement of the Archbishop of Antequera-Oaxaca:

> In San José del Progreso, where minerals are found, the problems of division in the community have been exacerbated now to the point of violence. Since this happened, some have pointed to Padre Martín as the cause of this confrontation because of his support of the mine's opponents.
>
> We inform the public, and especially the priests, that we are working with every possible measure to clarify the legal situation of Padre Martín and to demonstrate his innocence to that which he is accused; we ask you all to join us in prayer to Christ the Good Shepherd that we stay united with the strength of the Spirit trying to uncover and defend, always, the truth. We urge you to encourage the faithful to join in this prayer to God the Father.
>
> To all Believers…we trust that in intense prayer before the Blessed Sacrament it may be possible to clarify this situation and to shine the truth and justice for the sake of all our people.
>
> We want and demand to know the truth.

"May the peace of Christ be with you," Perez added.

Earlier that week, Perez drove Padre Martín and a group of choir members to evening mass in San José del Progreso. As they approached the chapel in San José, a pickup truck speeding toward them, came to a quick stop, its tires shrieking and filling the air with the smell of burning rubber. A group of masked paramilitaries rushed forward and smashed the windshield of the church shuttle car.

"They told the Padre to get out, so he could pay for the problems he had caused, Perez recounted.

> The Padre said, ' What are you talking about,' but they wouldn't let him talk, they said it was because of him that the two people were killed. But the Padre didn't know what had happened yet. They forced him out of the car, they tore

his shirt and threw rocks at his head. They were pointing a gun at him. So I got out of the car to help, to tell them to be calm, but they just kept hitting the padre and yelling at him. A crowd of people I didn't recognize was gathered, but nobody would help. It was if they knew ahead of time what was going to happen. I went to the chapel, and there I found people who would defend the priest, but (by then) they were driving away with the Padre. They took him to a house two blocks away. I called the municipal authorities to ask for help, but nobody would respond. The police came an hour later, and I told them where they took the Padre, but the police just left."

Padre Martín later said the kidnappers tied him naked to a chair, beat him severely, and threatened to set him on fire, accusations that were repeated in the Archbishop's statement.

Figure 11**:** One of Padre Martín's armed kidnappers walks calmly away from the scene.

Figure 12: Cell phone photo taken of the crowd of people Perez did not recognize—the mine's supporters—gathered around Padre Martin's car after his kidnapping.

Figure 13: The man in the cowboy hat was one of several in the crowd who were carrying weapons.

Figure 14: Mine supporters film the woman taking the pictures after she is spotted. Filming opponents is a regular form of intimidation in Oaxaca.

Pedro Díaz, a reporter from the community radio station Radio Calenda, broadcast the breaking news on-air.

"I made invited the kidnappers to call me at the station and say why they had taken the priest," he said.

And when they did, "I told them to put Padre Martín on the phone, to show us he is alive," Díaz recounts. "They refused. I asked what they wanted, who they wanted to negotiate with. They got nervous and hung up."

But by then, the kidnapping was public. People throughout the valley heard what was happening and heard the kidnappers' voices.

Following the radio broadcast, the kidnappers drove Padre Martín to the hospital in Oaxaca City, where they turned him over to police on the condition that he be charged with the murder of the San José municipal authorities. Police took the priest into custody, charging him not only with instigating the violence against the municipal authorities but also with being a member of the Popular Revolutionary Army, a guerrilla group that had bombed oil pipelines earlier that year. No charges were brought for the shooting of the mine's supporters. The police made no effort to go after the kidnappers—two of whom

were later identified as Georgina González and Cristina Vásquez, the latter being the sister of a former San José PRI mayor. Both continue to live in San José unprosecuted.

Nancy Davies, who writes for the *North American Congress on Latin America*, wrote in her coverage of the incident:

"I'm a government hostage," Father Martín said from his hospital bed in Oaxaca City, as six state police officers guarded his room. "The state government has been in favor of this (mining) project. If I'm out of the way, they can work freely."

The Archbishop of Antequera-Oaxaca's official condemnation ran in the daily *Noticias* on Sunday, May 10. Subsequently, more than a hundred priests from throughout Mexico joined in calls for Padre Martín's release. The charges were eventually dropped, but the message to those who would engage in activism against the mine couldn't have been clearer. As soon the priest was well enough, the archbishop moved him to an unknown parish for his protection.

Intimidation of political and human rights activists is business as usual in Oaxaca, especially during election seasons. But Padre Martín's kidnapping, physical abuse and arrest were beyond the norm.

"It wasn't just anything that happened. Doing something like that to a priest…there's no reason for things to happen that way. Here in Magdalena maybe 90 percent of the people are Catholic. This has never happened. The people are very sad," said Magdalena Mayor Cándido Sánchez. Sánchez is a member of the Democratic Revolutionary Party (PRD), which enjoys support among many poor communities but has little representation at the state and national levels.

"It's *inhuman* what they did to our *padrecito*!" sobbed a young Zapotec woman who would give her name only as 'loyal Catholic.' "*Es inhumano y no tiene perdón*!"

In the days following the deaths of the municipal officials and the kidnapping and arrest of the priest, San José del Progreso was a ghost town. Dogs barking and trucks humming past on the highway were the only sounds to be heard. The only human presence was a contingent of police guarding the abandoned town hall with assault rifles. Frightened residents in Magdalena would reluctantly crack open their doors and peer

outside, but would quickly shut and bolt the doors when asked for comment about the day's events. Sergio Pérez was the only one to agree to talk, which he did despite his wife's quiet protests.

Figure 15: Armed police guard the empty city hall in San José del Progreso in June 2010. Among the slogans spray painted on its walls are "Cuzcatlán don't exploit" and "6th of May will not be forgotten."

Tensions remain high in the Ocotlán Valley in November. In recent months, mine opponents in Magdalena set ablaze a truckload of industrial hosing that was being used to build a pipeline through their town against the will of the residents and even the mayor. The pipeline, which runs from a treatment plant in Ocotlán de Morelos to La Trinidad, has been a contentious issue from the beginning because residents say the mayor of Ocotlán approved its construction without consulting the affected communities

"I can't control the town anymore," said Cándido Sánchez. "What can you expect? We've been petitioning the government for funds to improve our roads for a year with no response, and with the snap of a finger the Canadian company gets the permit for this pipeline."

Opponents in San José del Progreso recently took over the city hall again, this time because the new PRI mayor—installed by the governor after the death of the previous mayor—gave the go-ahead for a large garbage dump to be built on the outskirts of town without consulting residents. The December elections are drawing near, and with them both optimism that the *Coordinadora* will emerge victorious and uncertainty over what reaction that victory will provoke from the mine developers and the state.

Nevertheless, the San José Project is running on schedule, and slated to begin full operation in the third quarter of 2011. Fortuna's President and CEO said in a news release that "Management is enthusiastic about the potential to increase silver and gold resources in this large and under explored [148,000 acre] land package. Drilling recommendations for the San Ignacio and Taviche targets are currently under review and drilling is expected to commence towards year-end."

Afterword:

The story of the San José conflict is not one of a single struggle surrounding a mine. Rather it's that of a broader struggle against systematic and predictable state repression and poverty, exacerbated by reckless foreign investment that puts stock value above community. The conflict in San José del Progreso is but one symptom of this far deeper malady, and other such symptoms can be seen throughout Oaxaca.

The Secretary of Indigenous Affairs estimates that there are currently some 124 agrarian conflicts in Oaxaca. On the Isthmus of Tehuantepec, a conflict rages over a wind-generating power project installed without the consultation or consent of the community. Opponents allege that the town authorities were paid off to allow the *ejido* to be used for the project.. After half a decade, violent conflict over indigenous rights to land and autonomy continues to broil between state-backed paramilitaries and the community of San Juan Copala. When residents in Zaachila learned in November that the municipal government had abused public funds it had promised to spend on much need infrastructure improvements, they held the mayor and other authorities hostage in the town hall, threatening to hang them if they tried to escape. And the list of grievances and reaction goes on.

On July 4, 2010, Oaxacans voted the PRI out of the governor's office for the first time in 80 years. The governor elect, Gabino Cue, will head the coalition party "United for Peace and Progress," made up of traditional parties ranging from the conservative National Action Party (PAN) to the leftist Workers Party (PT). Cue has not addressed the mining issue, even after his recent trip to San José del Progreso. Nevertheless, Cue was a supporter of Flavio Sosa, the APPO and the Section XXII during and after the 2006 uprising. The Revolutionary Democratic Party (PRD)—the only party to back the Coordinadora and demand clarifications on the legality of Fortuna's concession—also have a seat in the new government, which took power December 1. What this will mean for the San José Project and the social ills resulting from Oaxaca's entrenched political corruption remains to be seen.

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